**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

ULYSSES DANIELS,	:	
	:	
Petitioner,	:	
	:	
v.	:	**Criminal Action No.**
	:	**6:04-cr-2 (HL)**
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
	:	
	:	

<u>ORDER</u>

Before the Court is an Amended Report and Recommendation (Doc. 295) from United States Magistrate Judge G. Mallon Faircloth that recommends denying Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. Petitioner subsequently filed an Objection to the Recommendation in which he argues his defense counsel was ineffective in failing to have the sentencing court award credit for the time Petitioner spent in official detention prior to sentencing. Pursuant to 28 U.S.C. § 636, the Court has thoroughly considered Petitioner's Objection and has made a de novo determination of the portion of the Recommendation to which Petitioner objects.

After considering Petitioner's arguments and authority, the Court concludes, as did Judge Faircloth, that Petition has failed to meet his burden in establishing defense counsel was ineffective for failing to request credit for time served. Even assuming Petitioner could establish his defense counsel's conduct fell below an objective standard of reasonable

assistance, Petitioner cannot establish that he suffered prejudice as a result of his counsel's alleged ineffectiveness. As stated by Judge Faircloth, "[h]ad his counsel raised § 5G1.3, Petitioner cannot show that the court could have considered his related conviction and undischarged sentence any more than it did, or adjusted his sentence any further than the low end of the guideline range to which it had already departed downward." Accordingly, Judge Faircloth's Recommendation is accepted and Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody is denied.

SO ORDERED, this the 4th day of October, 2006.

/s/ Hugh Lawson
HUGH LAWSON, Judge

scs